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DECISION



J. Carter
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-190702

DATE: December 15, 1977

MATTER OF: Emerson Construction Company, Inc.

DIGEST:

Protest is summarily denied where protester's initial submission clearly establishes propriety of agency action and affirmatively demonstrates that protester is not entitled to relief. Award under IFB containing two schedules may be made to low bidder on second schedule since only bid on first schedule was conditioned on award also of second schedule and funds were not adequate for both.

Emerson Construction Company, Inc. (Emerson), has protested the award of a contract to another bidder under a solicitation issued by the Upper Missouri Region, Bureau of Reclamation.

The specifications were issued for the repair and modification of certain pilot laterals in the Riverton Unit, Pick-Sloan Missouri Basin Program, with the contemplated work divided into two schedules. In this connection, the solicitation provided that:

"Bids will be considered for award on either or both of the following schedules, but no bid will be considered for award for only a part of a schedule. Bidders may make such stipulations as they desire regarding a combination of schedules: Provided, that no bid will be considered for award which reserves a right to determine after bids are opened what schedule or combination of schedules will be accepted as an award of contract. If bidder offers a reduction for a combination of schedules, he shall state the items to which reductions are to be made and all payment under such items will be made at the reduced unit price."

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The following bids were received by the time of bid opening on September 27, 1977:

	<u>Schedule 1</u>	<u>Schedule 2</u>
Emerson	\$688,887.40	\$888,923.10
Harrison, Inc.	No bid	799,809.80
Clark Bros.	No bid	852,658.50
(Engineer's estimate)	582,852.00	757,123.00

Emerson stipulated in its bid that it would not accept schedule 1 without schedule 2. By letter dated November 7, 1977, the contracting officer advised Emerson that no contract would be awarded for schedule 1 at that time since the amount bid by Emerson for schedules 1 and 2 exceeded the amount budgeted and reserved. This letter also advised Emerson that the work under schedule 1 would be readvertised at a later date after additional appropriations became available and that the work under schedule 2 would be awarded to Harrison, Inc.

Emerson initially protested to the procuring activity. This protest was denied by the above letter which also stated in part that:

"The Government had previously determined that the amount originally budgeted was inadequate, and that funds in the amount of \$1,300,000 could be reserved for this work without further affecting the overall Riverton Unit program. Consideration was given to the overall Riverton Unit program to see if by further reprogramming the \$277,810.50 could be made available to award the work under both of the schedules. It was found that this amount could not be made available.

"In view of the above, it was determined that an award could not be made for the work under Schedules Nos. 1 and 2 because of the unavailability of funds. It was determined that the specifications did provide that an award could be made on either or both schedules. In this respect, the Government received a bid for Schedule No. 2 that was only 5.6 percent above the Engineer's Estimate; this bid was within the available funding, and there was no basis for rejecting the low bid received for this schedule."

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Emerson contends that, as the only bidder on both schedules, it should either be awarded a contract for both schedules or that all bids should be rejected and both schedules readvertised.

We see no merit in Emerson's position. The section of the solicitation quoted above clearly states that bids would be considered for award on either or both of the schedules, subject to any stipulation made by the bidder. Under the terms of its bid, Emerson could be awarded schedule 1 only if it were also awarded schedule 2 and Emerson's aggregate bid for both schedules exceeded the amount of the funds available for the project by a substantial amount.

Emerson also contends that if the limitation on funds prevented it from being considered for award of both schedules, then all of the bids for schedule 2 should have been rejected since each of the bids exceeded the amount of the engineer's estimate.

We see no merit in this contention. It is apparent from the contents of the agency's November 7 letter denying Emerson's initial protest, quoted above in part, that the \$1.3 million figure cited by the agency represented the overall funding limitation for the work contemplated in both schedules. We have held an agency determination that adequate funds are not available for contract obligation to be sufficient reason to reject the bids received. TINCO, B-186177, September 14, 1976, 76-2 CPD 242; International Multi Services, B-183333, June 13, 1975, 75-1 CPD 359; Ocean Data Systems, Inc., B-130248, August 16, 1974, 74-2 CPD 193. See also D-170878(1), January 11, 1971, where, in a similar situation, we applied this principle to a determination to award to the low bidder on one of two schedules to the exclusion of another bidder which submitted the only bid on both schedules.

In this case, it appears that the agency might reasonably have anticipated that some bid or combination of bids for schedules 1 and 2 would fall within the limits of available funding and it was apparent only after bid opening that the funding would be inadequate to support the award of both schedules. We note also that bidders were expressly advised that "Bids will be considered for award on either or both of the following schedules," and that the only bid received on schedule 1 carried a stipulation that award of that schedule would only be accepted if accompanied by award of schedule 2. In these circumstances, we see nothing improper in the agency's determination to consider only schedule 2 for award and we ascertain no prejudice to any bidder resulting from such action.

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In these circumstances, the protester's initial submission to this Office establishes clearly the propriety of the agency's actions and affirmatively demonstrates that the protester is not entitled to the relief requested. Accordingly, the protest is summarily denied. Alaska Industrial Coatings, B-190295, October 12, 1977, 77-2 CPD 290; Hawthorn Melody, Inc., B-190211, November 23, 1977.

In view of the action taken, the request for a conference is denied.


Deputy Comptroller General
of the United States